

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

<b>In the Matter of:</b>	)	<b>Case No. 08-RC-6-VI</b>
	)	
HERBTHYME FARMS, INC.,	)	
	)	
Employer,	)	
	)	
<b>and</b>	)	
	)	
LABORERS INTERNATIONAL UNION	)	
OF NORTH AMERICA, LOCAL 1184	)	
	)	
<u>Petitioner.</u>	)	

Appearances:

Dan M. Foreman  
Manatt, Phelps & Phillips, LLP  
Los Angeles, California  
For the Employer

Steven T. Nutter  
Reich, Adell & Cvitan  
Los Angeles, CA  
For Petitioner

**DECISION OF THE INVESTIGATIVE HEARING EXAMINER**

DOUGLAS GALLOP: On October 30, 2008, Laborers International Union of North America, Local 1184 (hereinafter Petitioner) filed a petition in the above-captioned matter to represent a unit of the agricultural employees of HerbThyme Farms, Inc. (hereinafter Employer). An election was conducted on November 6, 2008, with the Tally of Ballots showing 67 votes for Petitioner, 11 votes for no union and one void ballot. The Employer filed an objection to conduct of the election, contending that the Visalia Regional Director erred by failing to conduct the election for a statewide bargaining unit. After an investigation, the Executive Secretary of the Agricultural Labor Relations Board (hereinafter ALRB or Board) set the objection for hearing, which was conducted on February 9, 2009, at Indio, California. The parties argued the case orally. Upon the testimony of the witnesses, the documentary evidence received at the hearing, the parties' arguments and the record as a whole, the undersigned submits the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

The Visalia Regional Director conducted the election only for the Employer's Thermal/Oasis farm employees. Unless noted, the Employer's evidence was uncontradicted by Petitioner. The Employer operates four California growing operations, located in Thermal, Oceanside, Watsonville and Camarillo.<sup>1</sup> The Employer contends that the appropriate bargaining unit consists of the agricultural employees in Thermal, Oceanside and Watsonville, but not Camarillo, apparently because there is separate

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<sup>1</sup> The Employer also has operations in other states.

ownership for that facility. In addition, the Camarillo farm is entirely staffed by contractor employees. The record is incomplete regarding these issues, and the wages, hours and working conditions of the Camarillo employees. It does, however, appear that the Camarillo farm grows the same crops as the others, and is coordinated by the Employer's managers, as part of the same overall business plan of the Employer.

The Employer has its' headquarters and a packing operation in Compton, California. The parties stipulated that the packing operation employees do not share a community of interests with the employees who grow the Employer's crops, and should not be included in the unit. At the time of the election, the Thermal/Oasis facility employed about 95 agricultural employees, Oceanside employed about 90 and there were about 25 agricultural workers in Watsonville.

The Employer's President and CEO is in overall charge of the Employer's operations. The Employer's Director of Farm Operations coordinates all of the farm activities. The Director of Human Resources controls staffing levels, and has final authority over disciplinary matters. The Farm Analyst coordinates the Employer's crop plan. The Food Safety and Good Manufacturing Director oversees quality control and food health standards for the farms. All of these individuals are based in Compton but, in particular, the Director of Farm Operations, and the Food Safety and Good Manufacturing Director, frequently travel to the growing facilities.

The Thermal, Oceanside and Watsonville operations normally each have a Farm Manager. At the time of the election, the Farm Manager position in Thermal was vacant,

because that manager had been discharged, for engaging a labor contractor to replace direct hires, without authorization.<sup>2</sup> Other Farm Managers were acting as Thermal's manager, because of this, but that facility now has its' own Farm Manager. The direct hires were recalled to the Thermal Farm, once the contractor was told to leave.

The decision as to what crops to plant, and what acreage to assign for each crop at Thermal, Oceanside, Watsonville and Camarillo is determined by Compton management. These decisions are made based on the Employer's current and projected sales for each crop, drawn into a production plan by the Farm Analyst. Budgeting for the farms is determined by central management. If a Farm Manager wishes to purchase supplies or equipment, he submits a requisition request to Compton for approval. The Farm Managers participate in a variety of meetings, either in person or by telephone, with the Employer's Director of Farming, to discuss such topics as quality, farm acreage availability and outside purchases. The Farm Managers receive training guides from the central office regarding the growing of crops.

Although the heavy equipment used on the farms, such as freezers, tractors and trucks, is usually not transferred, there are occasions where this happens. Less bulky items, such as harvest totes, rooted cuttings and greenhouse plastic, are more frequently transferred from farm to farm. The Employer applies a standard operating procedure policy to the farms for the maintenance of heavy equipment.

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<sup>2</sup> The Employer contends this was an unauthorized aberration from its' policy, that contracting and discharge decisions are vested in central management.

When one of these growing operations wishes to hire employees, the Farm Manager submits a requisition, which is reviewed by the Director of Human Resources. If approved, the Farm Manager selects the individuals to be hired. Employees in Thermal, Oceanside and Watsonville all receive the same employee handbook, and are subject to the policies and procedures contained therein. The Employer does not require experience or any educational level for entry-level positions at these farms. The personnel records of these employees are maintained in Compton.

Employees in Oceanside punch a time clock, while those in Thermal and Watsonville do not. Raw data for payroll is submitted by the farms to Compton, who submits the data to ADP, after finalizing the data. The Employer has one ADP account. ADP submits the paychecks to the headquarters office for Thermal and Watsonville for distribution, but sends the Oceanside checks directly to that farm.

Entry-level employees at the three farms all receive the minimum wage and the same medical plan, although employee contributions vary by location. The three farms have the same job classifications for employees, involving similar work. Employees at those farms are all subject to the same performance review procedure. Requests for pay increases are approved by the Director of Human Resources and, ultimately, the President. Other than sending requests back for complete documentation, the Director of Human Resources has not reversed or modified the requested pay increases. The Employer provides similar health and safety accommodations for employees at these farms.

The Employer's Director of Human Resources is also in charge of the safety program. She conducts monthly safety meetings in which representatives of the three farms participate, either in person or by telephone. Employees attend safety meetings on topics decided by her, but these are conducted by managers at the farms. Employees who use pesticides at the farms receive the same pesticide training program.

There have been no non-managerial disciplinary discharges and few written disciplinary notices since the Director of Human resources began her current employment. She reviews all disciplinary cases and has, on one or two occasions, modified the recommended discipline.

The parties stipulated that the Thermal farm is located approximately 465 miles from the Watsonville farm and about 110 miles from the Oceanside farm. They further stipulated that the Oceanside farm is located about 410 miles from the Watsonville farm. The parties also stipulated that there is no interchange between non-supervisory employees of the three farms. The Employer does not discourage this, but does not post job openings at other farms. On one occasion, a Thermal employee conducted a one-day training session in Oceanside, with a Thermal supervisor.

The Employer engages an outside trucking company to transport crops from its farms to the packing house in Compton, and empty packing boxes from Compton to the farms. The Director of Farm Operations testified that in emergency situations, agricultural employees, including employees from the Thermal farm, have driven crops needed for immediate shipment to Compton, both before and after the election.

Petitioner called employee witnesses who testified that this, to their knowledge, only

began after the election. In light of the sporadic nature of this activity, and the stipulation that the packing operation employees should not be included in the bargaining unit, the undersigned considers this to be is a minor point.

At Petitioner's request, the undersigned takes judicial notice of the Certification of Representative in *The Green House (The Herb Farm, Inc.)* Case No. 90-RC-2-EC(SD), in which Union de Trabajadores Agricolas Fronterizos was certified as the exclusive representative of that employer's agricultural employees, in a statewide unit. Petitioner contends that this involved what is now the Employer's Oceanside farm, and the Employer subsequently purchased the business. The Director of Farm Operations gave a description of the boundaries of the Oceanside farm that roughly coincides with a description of the Green House farm presented by Petitioner. Petitioner also cited an article from the *Food Institute Report* for March 2001, which states that the Employer purchased the Green House farm. Said report constitutes hearsay. Both of the Employer's witnesses are relatively recent hires, and the Director of Farm Operations was unable to confirm the purported sale. In any event, many additional facts would have to be developed before any conclusions could be reached as to the ramifications of the prior certification, and the alleged sale.

### **ANALYSIS AND CONCLUSIONS OF LAW**

Under Section 1156.2 of the Agricultural Labor Relations Act (Act), the Board may only certify less than a statewide unit where the employer conducts two or more agricultural operations in noncontiguous geographic areas. In such cases, the Board

examines the community of interests between the agricultural employees at the operations. Such factors include:

1. The physical or geographical locations in relation to each other;
2. The extent to which administration is centralized, particularly with respect to labor relations;
3. The extent to which employees at different locations share common supervision;
4. The extent of interchange among employees from location to location;
5. The nature of the work performed at the various locations, and the similarity or dissimilarity of the skills involved;
6. The similarity or dissimilarity in wages, hours, and other terms and conditions of employment; and
7. The pattern of bargaining history among employees.

*Coastal Berry Company, LLC* (2000) 26 ALRB No. 2; *Bruce Church, Inc.* (1977) 2 ALRB No. 38.

In *Coastal Berry*, the Board rejected earlier cases finding that there is a legislative presumption in favor of statewide units, even where there are noncontiguous operations. In such cases, the Board is free to use a community of interests test, without any presumption. The Board also found, in concurrence with current National Labor Relations Board cases, that the lack of significant employee interchange is a strong factor



in favor of separate units. In this regard, the Board cited the following language:

The frequency of employee interchange is a critical factor in determining whether employees who work in different [groups] share a “community of interest” sufficient to justify their inclusion in a single bargaining unit. *Spring City Knitting Co. v. NLRB* (C.A. 9, 1981) 647 F.2d 1011, at page 1015 [107 LRRM 3307].

The record demonstrates that the Employer operates a highly integrated operation, using the four farms as interrelated functional components of its’ business enterprise. The evidence also establishes that the job duties, wages, hours, benefits, and other terms and conditions of employment among the Thermal/Oasis, Oceanside and Watsonville employees are very similar.

Although there is an overall centralized control over labor relations policies at the Compton headquarters, the selection of individuals for hire is made at the farm level. Issues of discipline, pay increases, work assignments and other matters of day-to day supervisions are initiated at the local level, and are only occasionally overruled by central management. While the Employer’s higher-level managers sometimes travel from farm to farm, there is only one instance in the record showing where the employees’ immediate supervisors have performed work-related functions other than at their assigned farms. Thus, it is concluded that the employees at the farms do not normally share common supervision, beyond general policy-related considerations.

The parties stipulated that there is no interchange of employees from location to location. The one instance of where an employee participated in training for a day at a different facility is insignificant. While perhaps a few employees sometimes transport items to Compton, the parties agree that the packing operation employees should not be

included in the bargaining unit. Therefore, this activity does not establish work-related contact between the facilities under consideration. The farms are distant, and in some cases very distant from each other, and no party contends that any two of them are located in a single definable agricultural production area.<sup>3</sup> There is some evidence that the Oceanside farm may be a successor to an employer with a different collective bargaining history, but the record is insufficient to find this to be a factor.

The Employer cites *Silver Terrace Nurseries, Inc.* (1993) 19 ALRB No. 12, in support of its' argument for a statewide unit. At the outset, it is noted that the primary issue in that case was whether the employees at one location were agricultural employees. Furthermore, *Silver Terrace* issued prior to the *Coastal Berry* decision. At that point, the Board had not declared lack of employee interchange to be a critical factor in making bargaining unit determinations. Nevertheless, the facts found in *Silver Terrace* did show some employee interchange. That case also found that there was direct common supervision of employees at the two locations by the company's two owners. Finally, the Board left open the option for the employer to file a unit clarification petition if the union won the election, an option not present herein.

On the other hand, the facts established in this case are not as compelling as those found in *Coastal Berry* to establish separate bargaining units. In *Coastal Berry*, a separate unit of Monterey/Santa Cruz County employees was found appropriate. Thus, it

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<sup>3</sup> The Board treats facilities within such areas as if they were contiguous, and finds a single unit appropriate for such operations. *Coastal Berry Farms, LLC*, supra; *Foster Poultry Farms* (1987) 13 ALRB No. 5.

could be argued that in this case, a separate unit consisting of the Thermal/Oasis and Oceanside farms would be appropriate, since they are similarly situated geographically.<sup>4</sup> In contrast, the Court, in *Spring City Knitting Co. v. NLRB*, supra, found separate units appropriate where the facilities were located 140 miles apart. In addition, no party in *Coastal Berry* argued that the Monterey and Santa Cruz County farms should be placed in separate units, and those farms constituted one of that employer's administrative regions. In *Coastal Berry*, the employee wages at the facilities were different, and management structured its' wage scales to keep the work forces separate, factors not present here. In addition, local management had full authority over discipline and quality standards.

Nevertheless, it is concluded that, given the strong emphasis now placed on lack of employee interchange, and the lack of direct common supervision, the initiation of many employee actions at the local level, and geographical considerations, separate units for the Employer's facilities are the most appropriate. Based on the foregoing, the undersigned issues the following recommended Order.

### **ORDER**

The Employer's objection to conduct of the election is overruled, and a certification of results shall issue.

Dated: March 17, 2009

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Douglas Gallop  
Investigative Hearing Examiner, ALRB

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<sup>4</sup> Before doing this, the undersigned would recommend further investigation of the collective bargaining history of the Oceanside farm.